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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,237	08/13/2001	Stephen F. Gass	SDT 309	8812
27630	7590	08/04/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/929,237	GASS ET AL.	
	Examiner	Art Unit	
	Ghassem Alie	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11, 20-24, and 28-30 is/are pending in the application.
 4a) Of the above claim(s) 4-10, 22, 24, and 29 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3, 11, 20, 21, 23, 28 and 30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 08/13/01 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/12/04 to 4/29/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the amendment filed on 04/20/04 where claims 1-11, 20-24, and 28-30 are pending, claims 4-10, 22, 24, and 29 have been withdrawn, and claims 12-19 and 25-27 have been canceled.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 20 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 11-13 of copending Application No. 10/215,929. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in claim terminology used but encompass the same subject matter, that is, the claims 1 and 11-13 anticipated claim 20 of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting Claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,048,886 to Zettler. Zettler discloses the invention as claimed including a machine comprising: a cutting tool for cutting workpieces (a punch and die); at least one motor configured to drive the cutting tool (inherently attached to cam shaft 22); a detection system 50 configured to detect a contact between a person and a the cutting tool (figs. 6a and 6b); a brake mechanism 18 controllable to stop the cutting tool if the contact is detected, and a control system 400 configured to determine the operability of the brake mechanism and to disable the at least one motor if the brake mechanism is inoperable. The brake mechanism includes a capacitor 128 adapted to store electrical charge, and the control system is configured to determine the capacitance of the capacitor (column 7, lines 4-17). The brake mechanism is adapted to be electrically coupled to the control system, and the control system is configured to disable the at least one motor if the brake mechanism is not coupled to the control system (column 1, lines 47-51).

To the degree that it can be argued that “contact” means the physical body of the person touching the saw blade, the following rejection is applied.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 11, 20, 21, 23, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda (4,117,752) in view of Zettler. Regarding claim 1, Yoneda teaches a woodworking machine including a cutting tool 14 for cutting workpieces, at least one motor 10 configured to drive the cutting tool 14, and detection system configured to detect contact between a person and the cutting tool 14. Yoneda also teaches a brake mechanism 20 controllable to stop the cutting tool 14 if the contact is detected by the detection system. See Figs. 1-5 and col. 2, lines 14-65 and col. 3, lines 14-26 in Yoneda. Yoneda does not teach a control system configured to determine the operability of the brake system and to disable at least one motor if the brake mechanism is inoperable. However, the use of a control system to test the performance of a brake system and disable the driving member of a cutting device or the like is well known in the art such as taught by Zettler. Zettler teaches a control system 400 configured to determined the operability of a brake mechanism 18 and to disable at least a motor if the brake mechanism 18 is inoperable. See Figs. 2 and 6a and col. 1, lines 35-67 and col. 3, lines 1-28 and col. 4, lines 22-68 in Zettler. It would have been obvious to one skilled in the art at the time of the invention to equip the control system of Yoneda's braking system with the brake monitoring capability as taught by Zettler in order to test the performance and operability of the brake system and ensure the safety of the operator during the operation of the woodworking machine.

Regarding claim 2, Yoneda teaches everything noted above including a capacitor cp1-cp3, and where the control system is configured to determine the capacitance of the capacitor

Cp1-Cp3. Yoneda's control system has capacitors cp1-cp3 and it is configured to determine the capacitance of the capacitor cp1-cp3. See col. 2, lines 43-65 in Yoneda.

Regarding claim 3, Yoneda teaches everything noted above including that the capacitor cp1-cp3 is adapted to store electrical charge, and where the control system is configured to determine the electrical charge stored on the capacitor cp1-cp3.

Regarding claim 11, Yoneda as modified by Zettler teaches everything noted above including that the brake mechanism 20 is adapted to be electrically coupled to the control system, as modified by Zettler, and where the control system is configured to disable the at least one motor if the brake mechanism is not coupled to the control system. Yoneda's control system, as modified by Zettler, inherently disable the motor if the braking system is not coupled to the control system, since the control system also disable the motor if the braking system is not operable.

Regarding claims 20, 21, and 23, Yoneda as modified by Zettler teaches everything noted above including that the control system is adapted to at least check a portion of the brake system to verify that the portion of the brake system is operational. Yoneda's control system, as modified by Zettler, tests the braking system as the whole, which also includes a portion of the braking system. Yoneda's control system, as modified by Zettler, also is not running or actuating the motor if the brake system 20 is not operational. The control system also is capable of testing the detecting system prior to actuation of the motor.

Regarding claims 28 and 30, Yoneda as modified by Zettler teaches everything noted above including a reaction system adapted to perform a specified action upon detection of the contact and a self-test system adapted to test operability of the brake system.

Declaration under 37 CFR 1.132

8. The declaration under 37 CFR 1.132 filed 04/20/04 is sufficient to overcome the rejection of claims 1-3, 20, 21, 23, 28, and 30 based upon 35 U.S.C. 102 (b) and 35 U.S.C. 103 (a) as set forth in the last Office action because: the declaration fails to provide convincing reasons that indicate Zettler's brake monitoring system is not capable of performing the same function as the brake monitoring system in the instant application. The declaration also fails to provide convincing reasons why Zettler's brake monitoring system cannot be added to the Yoneda's brake mechanism. The declaration fails to provide any facts or proofs regarding the instant invention or the prior art. There is also no connection between the claims of the instant inventions and the alleged evidence which is provided in the

Response to Amendment

9. Applicant's arguments filed on 04/20/04 have been fully considered but they are not persuasive. Applicant's argument that Zettler does not teach a woodworking, a cutting tool for cutting workpieces, a brake mechanism controllable to stop the cutting tool, a brake mechanism that includes a capacitor system, and a control system configured to determine the electric charge stored on the capacitor is not persuasive. Zettler's cutting tool has a punch which is capable of creating punches in workpieces such as wood. Therefore, Zetter's cutting tool is considered to be a woodworking machine. Zettler also teaches a brake mechanism 18, which is controllable to stop the cutting tool. The cutting tool is a punch which is operable by a crankshaft and the brake mechanism 18 stops the actuation of the crankshaft. Therefore, the brake mechanism 18 stops the cutting tool which the punch. Zettler also teaches that the control system has a capacitor 128. The control system is capable of detecting the electric

charge of the capacitor. Applicant's argument that Zellter does not teach a detection system configured to detect contact between a person and the cutting tool is not persuasive. The detection system 50 can detect the presence of a person in close approximation to the cutting tool or the punch. Because, "contact" has not been defined in the specification as the physical body a person touching the cutting tool; therefore, the close approximation to the cutting tool can be considered as a contact of the person with the cutting tool. In addition, the cutting tool can be considered as the whole punch press unit. Therefore, the detecting device could detect a physical contact of a person with the punch press unit. Applicant's argument that the Zettler's brake monitoring system is not combinable with Yoneda's braking system and there is no motivation, suggestion, or teaching for adding the Zeller's brake monitoring system to braking mechanism of Yoneda is not persuasive. The concept of monitoring a braking system of a cutting device is clearly taught by Zettler. Zettler also teaches that for safety reason the brake mechanism has been equipped with a brake monitoring system. Therefore, the concept of equipping Yoneda's brake system with the brake monitoring system has been suggested and taught by Zettler. Yoneda's brake mechanism can be monitored by the same control system that controls the operation of the braking mechanism and Zettler teaches this. In addition, the argument that the references are not physically combinable is not persuasive, because the references are not physically combined. The concept of monitoring the brake system is well known in the art as taught by Zettler and this concept can be incorporated to Yoneda's braking mechanism by a person ordinary skilled in the art.

The provisional obviousness-type double patenting of claims 1, 20, 28 over claim 5 of copending Application No. 10/00211 has been withdrawn, since claims in copending Application No. 10/00211 have been amended.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (703) 305-4981. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (703) 305-1082. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

July 23, 2004

Boyer Ashley
BOYER ASHLEY
PRIMARY EXAMINER